APPENDIX A.

Summary of Legislative History of Section 77B.

In July of 1930, the President of the United States announced that he had authorized the Attorney General to undertake an exhaustive investigation into the whole question of bankruptcy law and practice for the purpose of proposing to Congress essential reforms therein. In 1931, the Attorney General reported and recommended that Congress consider making certain amendments to the Bankruptcy Act including amendments for the reorganization of corporations in bankruptcy. 8 American Bankruptcy Review 81 (Oct., 1931).

In February, 1932, the President, in a message to Congress, recommended changes in the bankruptcy law based upon the report of the Attorney General, which he forwarded to Congress (8 American Bankruptcy Review 225) (Feb., 1932). Following closely on the President's recommendation and in March of 1932, there was introduced in Congress the Hastings bill (S. 3866, H. R. 9968), which included, among other things, a proposal to amend the Bankruptcy Act by adding to it, as Section 76, a provision for corporate reorganization. 8 American Bankruptcy Review 260, 301 (Mar. 1932).

In his final report as Attorney General of the United States, the then Attorney General in December of 1932 submitted to Congress a recommendation for the immediate consideration of pending bankruptcy legislation, with emphasis upon early enactment with at least a provision for corporate reorganization.

After a second emergency message to Congress, on the subject of bankruptcy reforms, in January, 1933, another bill was introduced, the McKeown bill (H. R.

14133), which sought to repeal Sections 12 and 13 of the Bankruptcy Law relating to compositions and substitute therefor a provision relating to corporate reorganizations. 9 American Bankruptcy Review 151 (Jan., 1933).

Speeches on the subject were made in Congress—see Footnote 5 *supra*.

A valuable summary of the legislative history of 77B is to be found in *Duparquet Co.* v. *Evans*, 297 U. S. at 218-221.

The proposed bankruptcy legislation was a matter of public knowledge and public discussion. Mr. Robert T. Swaine (of the firm of attorneys representing the Trustee), in an article in the Virginia Law Review for February, 1933 pointed out that there had been at that time introduced in the Senate one bill and in the House two bills to provide for corporate reorganization under the Federal bankruptcy power (19 Va. Law Review 317, 328). See also other discussion in the same issue of the Virginia Law Review, 19 Va. Law Review, pages 333, 340, 343, and Editor's Note on the Reorganization Statute, page 382. See also Note in 42 Yale L. J. 387 (Jan., 1933).

In the face of this record there is no reason to assume, as did the Court below, that none of the landlords or their attorneys knew of the pending legislation or that it was not in their minds when the reservation riders were demanded and adopted. In view of the obscurity of the *Manhattan Properties* case at the time, the only reasonable assumption is the exact opposite from that of the Circuit Court of Appeals. Many of the landlords and their attorneys must have known of the pending legislation.

APPENDIX B.

Statutes Involved.

The pertinent provisions of the Corporate Reorganizations Act, which was added to the Bankruptcy Act as Sections 77A and 77B thereof by the Act of June 7, 1934, 48 Stat. 911, are:

> "Sec. 77A. In addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors, as provided in section 77B of this Act."

Subdivision (a):

> "Any corporation which could become a bankrupt under Section 4 of this Act, * * * may file an original petition * * * in any proceeding pending in bankruptcy, whether filed before or after this section becomes effective. * * *."

Subdivision (b) (6):

> "A plan of reorganization within the meaning of this section * * * (6) may reject contracts of the debtor which are executory in whole or in part, including unexpired leases except contracts in the public authority; * * *"

Subdivision (b) (10):

> "* * * The term 'creditors' shall include for all purposes of this section and of the reorganization plan, its acceptance and confirmation, all holders of claims of whatever character against the debtor or its property, including claims under executory contracts whether or not such claims would otherwise constitute provable claims under this Act. The term 'claims' includes debts, securities, other

than stock, liens, or other interest of whatever character. * * *

"In case an executory contract or unexpired lease of real estate shall be rejected pursuant to direction of the judge given in a proceeding instituted under this section, or shall have been rejected by a trustee or receiver in bankruptcy or receiver in equity in a proceeding pending prior to the institution of a proceeding under this section, any person injured by such rejection shall, for all purposes of this section and of the reorganization plan, its acceptance and confirmation, be deemed to be a creditor. The claim of a landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be treated as a claim ranking on a parity with debts which would be provable under section 63(a) of this act, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by said lease for the three years next succeeding the date of surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the filing of the petition, plus unpaid rent accrued up to such date of surrender or reentry: * * *"

Subdivision (c) (5):

"Upon approving the petition or answer or at any time thereafter, the judge, in addition to the jurisdiction and powers elsewhere in this section conferred upon him, * * * (5) may direct the rejection of contracts of the debtor executory in whole or in part; * * *."

Subdivision (p):

"This section shall take effect and be in force from and after the date of the approval of this

amendatory Act and shall apply as fully to debtors, their stockholders and creditors, whose interests or debts have been acquired or incurred prior to such date, as to debtors, their stockholders and creditors, whose interests or debts are acquired or incurred after such date. Proceedings under this section may be taken in proceedings in bankruptcy which are pending on the effective date of this amendatory Act."

Section 63 (a) of the Bankruptcy Act as amended reads:

"Debts of the bankrupt may be proved and allowed against his estate which are * * * (7) claims for damages respecting executory contracts including future rents whether the bankrupt be an individual or a corporation, but the claim of a landlord for injury resulting from the rejection by the trustee of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall in no event be allowed in an amount exceeding the rent reserved by the lease, without acceleration, for the year next succeeding the date of the surrender of the premises plus an amount equal to the unpaid rent accrued up to said date: Provided, That the court shall scrutinize the circumstances of an assignment of future rent claims and the amount of the consideration paid for such assignment in determining the amount of damages allowed assignee hereunder: Provided further, That the provisions of this clause (7) shall apply to estates pending at the time of the enactment of this amendatory Act, in which the time for filing such claims has not expired."